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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/515,310	02/29/2000	John M. Quernemoen	RA-5244	2025

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EXAMINER
DODDS, HAROLD E

ART UNIT	PAPER NUMBER
2177	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)	
Office Action Summary	09/515,310	QUERNEMOEN, JOHN M.	
	Examiner	Art Unit	
	Harold E. Dodds, Jr.	2177	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _21 May 2004_.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1 and 3-21_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) _7-21_ is/are allowed.

6)☒ Claim(s) _1 and 3-6_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

Request For Continued Examination

1.   A request for continued examination under 37 CFR 1.114, including the

fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since

this application is eligible for continued examination under 37 CFR 1.114, and the fee

set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office

action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

21 May 2004 has been entered.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Stellwagen, Jr. (U.S. Patent No. 5,835,755) and Bartlett et al. (U.S.

Patent No. 6,263,382).

4.   Stellwagen renders obvious independent claim 1 by the following:

"...obtaining at least one user defined workload requirement..." at col. 9, lines 21-23,

col. 7, lines 48-51, and col. 8, 39-43.

"...the user defined workload requirement..." at col. 7, lines 48-51 and col. 8, 39-43.

"...Includes a plurality of inputs from a user..." at col. 7, lines 48-51 and col. 8, lines 39-

43.

"...determining the database management system server hardware requirements..." at

col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43.

"...for the yet-to-be built database management system server..." at col. 8, lines 27-30,

col. 1, lines 32-35, and col. 4, lines 8-14.

"...as a function of said user defined workload requirement..." at col. 4, lines 33-36, col.

7, lines 48-51, and col. 8, 39-43.

"...and outputting said yet-to-be built database management system server

requirements..." at col. 8, lines 63-65, col. 8, lines 27-30, col. 1, lines 32-35, col. 4, lines

8-14, and col. 8, 39-43.

Stellwagen does not teach the maximum desired processor utilization and the

transactions per second requirements.

5.   However, Bartlett teaches the use of processor utilization and transactions

per second requirements as follows:

"...a maximum desired processor utilization..." at col. 16, lines 26-29.

"...and a transactions per second requirement..." at col. 16, lines 19-21.

It would have been obvious to one of ordinary skill at the time of the invention to

combine Bartlett with Stellwagen to determine maximum processor utilization in order

to predict the hardware requirements and provide sufficient processing power to meet

these requirements. Stellwagen and Bartlett, teach the use of related systems. They

teach the use of computers, the use of databases, the use of networks, the use of

clients, the use of servers, the use of hardware, the use of software, the use of

workloads, the use of requirements, and the use of the SQL query language.

Stellwagen provides a proposed database management system server and Bartlett

provides parameters for determining the performance of the server.

     6.   As per independent claim 4, the "...obtaining at least one user defined

workload requirement...," is taught by Stellwagen at col. 9, lines 21-23, col. 7, lines 48-

51, and col. 8, 39-43,

the "...determining the database management system server hardware requirements...,"

is taught by Stellwagen at col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and

col. 8, 39-43,

the "...for the yet-to-be built database management system server...," is taught by

Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

the "...as a function of said user defined workload requirement...," is taught by

Stellwagen at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43,

the "...and outputting said yet-to-be built database management system server

requirements...," is taught by Stellwagen at col. 8, lines 63-65, col. 8, lines 27-30, col. 1,

lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...said database management system server requirements...," is taught by

Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...include an expected effective CPU utilization...," is taught by Bartlett at col. 16,

lines 26-29,

the "...for the yet-to-be built database management system server...," is taught by

Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

and the "...based on the user defined workload requirements...," is taught by Stellwagen at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43.

    7.   As per independent claim 5, the "...obtaining at least one user defined workload requirement...," is taught by Stellwagen at col. 9, lines 21-23, col. 7, lines 48-51, and col. 8, 39-43,

the "...determining the database management system server hardware requirements...," is taught by Stellwagen at col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...for the yet-to-be built database management system server...," is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

the "...as a function of said user defined workload requirement...," is taught by Stellwagen at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43,

the "...and outputting said yet-to-be built database management system server requirements...," is taught by Stellwagen at col. 8, lines 63-65, col. 8, lines 27-30, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...said database management system server requirements...," is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...include an expected number of users that can be supported...," is taught by Bartlett at col. 16, line 14-15,

the "...by the yet-to-be built database management system server...," is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

and the "...based on the user defined workload requirements...," is taught by Stellwagen

at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43.

12.   As per claim 6, the "...said database management system server

requirements...," is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col.

8, 39-43,

the "...includes an expected effective CPU utilization...," is taught by Bartlett at col. 16,

lines 26-29,

the "...of the yet-to-be built database management system server...," is taught by

Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

and the "...based on the user defined workload requirements...," is taught by Stellwagen

at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43.

13.   Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Stellwagen, Jr. (U.S. Patent No. 5,835,755), Bartlett et al. (U.S. Patent No. 6,263,382),

and Van Venrooy et al. (U.S. Patent No. 6,233,602).

Stellwagen renders obvious independent claim 3 by the following:

"...obtaining at least one user defined workload requirement..." at col. 9, lines 21-23, col.

7, lines 48-51, and col. 8, 39-43.

"...determining the database management system server hardware requirements..." at

col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43.

"...for the yet-to-be built database management system server..." at col. 8, lines 27-30,

col. 1, lines 32-35, and col. 4, lines 8-14.

"...as a function of said user defined workload requirement..." at col. 4, lines 33-36, col.

7, lines 48-51, and col. 8, 39-43.

"...and outputting said yet-to-be built database management system server

requirements..." at col. 8, lines 63-65, col. 8, lines 27-30, col. 1, lines 32-35, col. 4, lines

8-14, and col. 8, 39-43.

"...said database management system server requirements..." at col. 1, lines 32-35, col.

4, lines 8-14, and col. 8, 39-43.

"...for the yet-to-be built database management system server..." at col. 8, lines 27-30,

col. 1, lines 32-35, and col. 4, lines 8-14.

Stellewagen does not teach the use of requirements for the number of procesors,

the amount of memory, and the amount of mass storage.

14.   However Bartless teaches the use of requirements for the number of

process or and the amount of memory as follows:

"...include a number of processors requirement..." at col. 3, lines 59-64.

"...a memory size requirement..." at col. 8, lines 49-52.

It would have been obvious to one of ordinary skill at the time of the invention to

combine Bartlett with Stellwagen to determine the number of processors and the

amount of memory required in order to define the basic operating hardware components

of a computer. Stellwagen and Bartlett, teach the use of related systems. They teach

the use of computers, the use of databases, the use of networks, the use of clients, the

use of servers, the use of hardware, the use of software, the use of workloads, the use

of requirements, and the use of the SQL query language. Stellwagen provides a

proposed database management system server and Bartlett determines the number of

processors and the amount of memory.

Bartlett does not teach the use of a mass storage requirement.

15.   However, Van Venrooy teaches the use of a mass storage requirement as

follows:

"...and a mass storage requirement..." at col. 4, lines 24-27,

It would have been obvious to one of ordinary skill at the time of the invention to

combine Van Venrooy with Stellwagen and Bartlett to determine the amount of mass

storage required in order to define the additional hardware required for the massive

storage of data. Stellwagen, Bartlett teach the use of related systems. They teach the

use of computers, the use of databases, the use of networks, the use of clients, the use

of servers, the use of hardware, the use of software, and the use of requirements.

Stellwagen provides a proposed database management system server, Bartlett

determines the number of processors and the amount of memory, and Van Venrooy

provides the mass storage requirements.

Allowable Subject Matter

16.   Claims 7-21 are allowed. The following is an examiner's statement of

reasons for allowance: The Examiner finds Applicant's arguments on pages 10-16 of

the "Amendment" filed 21 May 2004 concerning a method for determining computer

hardware requirements for a yet-to-be-built database management system server using

user defined workload requirements persuasive as applied to independent claim 7. The

combinations of prior art from Stellwagen, Jr. (U.S. Patent No. 5,835,755) and Blake et

al. (U.S. Patent No. 6,067,412) neither render obvious nor anticipates the combination

of recited elements in light of claim 7. In particular, the combination of Stellwagen and

Blake does not render obvious the phrase "a ratio of said calculated transactions per

second to said baseline transactions per second."

17.   The Examiner finds Applicant's arguments on page 9 of the "Amendment"

and the "Supplemental Declaration Under Rule 1.131" both filed 21 May 2004

concerning a method for determining computer hardware requirements for a yet-to-be-

built database management system server using user defined workload [requirements]

persuasive as applied to independent claim 7. The combinations of prior art from

Stellwagen, Jr. (U.S. Patent No. 5,835,755) and Yang et al. (U.S. Patent No. 6,542,854)

render obvious and anticipates the combination of recited elements in light of claims 8,

16, and 21. The "Supplemental Declaration Under Rule 1.131" meets all criteria that

show the invention claimed in claims 8, 16, and 21 was invented by the applicant prior

to the filing date of the Yang patent on 30 April 1999. No adequate prior art with an

earlier filing date has been found to replace the Yang patent. The affidavit relates the

invention to a file containing an E-mail message of an updated version of the NT sizer

program, which was completed and distributed to a number of recipients prior to 30 April

1999. The distribution to number of recipients meets the corroboration requirement "in

order to establish an actual reduction to practice, an inventor's testimony must be

corroborated by independent evidence" per *Cooper v. Goldfarb,* 154 F.3d 1321, 1330,

47 USPDQ2d 1896, 1903(Fed. Cir. 1998). The NT Sizer User Guide was not published

prior to 28 February 1999, which is one year prior to the filing date of the patent

application. The affidavit maps the elements in the independent claims to the corresponding elements in the disclosure of the NT Sizer User Guide.
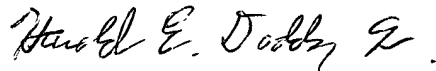
Response to Arguments

18.   Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection. For these claims, the Zang references have been replaced with references from Bartlett and Van Venrooy, which have filing dates predating the 30 April 1999 filing date of Zang.

Conclusion

19.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold E. Dodds, Jr. whose telephone number is (703)-305-1802. The examiner can normally be reached on Monday - Friday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (703)-305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Harold E. Dodds, Jr.
Patent Examiner
August 19, 2004